

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Ervan M. Harvey, Jr.,)	
)	C/A No. 9:07-1786-MBS
Plaintiff,)	
)	
vs.)	
)	ORDER
Mr. John LaManna, Warden of FCI)	
Edgefield; Ms. Chestnut, Unit A-4)	
Secretary, and Mr. Mahomes, Unit A-4)	
Manager,)	
)	
Defendants.)	
_____)	

Plaintiff Ervan M. Harvey, Jr. is an inmate in custody of the Federal Bureau of Prisons. He currently is housed at FCI-Williamsburg in Salters, South Carolina. On July 2, 2007, Plaintiff, appearing *pro se*, filed a complaint seeking relief pursuant to Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971). Plaintiff filed an amended complaint on August 16, 2007.

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Bristow Marchant for pretrial handling. On March 19, 2009, Defendants filed a motion to dismiss. On March 20, 2009, the Magistrate Judge issued an order pursuant to Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), advising Plaintiff of the dismissal procedures and the possible consequences if he failed to respond adequately. Despite being granted an extension of time, Plaintiff did not respond to the motion to dismiss.

On May 27, 2009, the Magistrate Judge issued an order directing Plaintiff to respond to the motion to dismiss within ten days. Plaintiff was cautioned that his failure to respond would subject the action to being dismissed for failure to prosecute. Plaintiff filed no response to the motion to

dismiss or to the Magistrate Judge's May 27, 2009 order.

On June 17, 2009, the Magistrate Judge filed a Report and Recommendation in which he recommended that the case be dismissed with prejudice pursuant to Fed. R. Civ. P. 41(b) for lack of prosecution. Plaintiff filed no objection to the Report and Recommendation.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). In the absence of objections to the Report, this court is not required to give any explanation for adopting the recommendation. Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983).

The court has carefully reviewed the record and concurs in the recommendation of the Magistrate Judge. The court adopts the Report and Recommendation and incorporates it herein by reference. The within action is dismissed with prejudice for failure to prosecute pursuant to Rule 41(b).

IT IS SO ORDERED.

/s/ Margaret B. Seymour
United States District Judge

Columbia, South Carolina
July 16, 2009.

NOTICE OF RIGHT TO APPEAL

Plaintiff is hereby notified that he has the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.